

REMARKS

In the most recent non-final Office action dated November 8, 2005, claims 1-11 and 17-21 were substantively examined and claims 12-16 and 22-26 were withdrawn.

By way of the outstanding Office action, the specification stands objected to. Claims 1-9, 11 and 17-21 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ward, U.S. Patent No. 5,823,350 ("Ward") in view of Focke et al., U.S. Patent No. 5,586,648 ("Focke"), and claim 10 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Ward in view of Focke et al. and further in view of Boriani et al., U.S. Patent No. 6,021,893 ("Boriani").

In response, the specification has been amended, claims 1, 3, 6, 18, 20, and 21 have been amended and claims 2, 4, 5, 7, 8 and 9 have been canceled.

Priority Claim.

Enclosed herewith is a certified copy of the priority document, Italian Patent Application No. BO 2002A 000741. Accordingly, the claim for priority is now complete.

The Objection to the Specification Has Been Addressed.

The Office action objects to the specification for referring to the claims. By way of this amendment, the references to the claims in the specification have been deleted. Accordingly, this objection should be withdrawn.

Claims 1, 3, 6, 10, 11 and 17-21 are Allowable.

Applicants request withdrawal of the rejection to claim 1, as amended, as obvious over Ward in view of Focke. Claim 1 has been amended to encompass subject matter originally claimed in dependent claims 2, 5 and 6. Amended claim 1 recites a package of tobacco articles including, in part, a container, a collar connected inside the container, at least one marker housed inside the container, and a label supporting the marker and interposed between a wall of the collar and a wall of the container.

Initially, claim 1 is not obvious over Ward in view of Focke, because in order to reach the invention as claimed by claim 1, one would have to completely disregard the teachings given by Ward, in which the surveillance sensor 52 is attached to a back side panel 42. There would be no suggestion to discard these teachings without using applicants own disclosure as a template, and no such suggestion can be found in the reference in any event.

Furthermore, claim 1 is not obvious over Ward in view of Focke because Ward teaches away from the claimed subject matter. See MPEP § 2145(X)(D)(1). In Ward, the sensor 52 is attached to a back side panel 42. See Ward, col. 3, lines 8-10. An interior panel 46 is spaced away from the back panel 42 to form a pocket or a gap of approximately 1/10 to 1/5 inches, so that the interior panel 46 and the contents of the package are spaced away from the sensor 52. See Ward, col. 3, lines 6-8. See also Fig. 2A. Accordingly, Ward teaches to provide a gap in the packaging and dispose the sensor in the gap.

In contrast, in the claimed invention, the marker and the label are “interposed between a wall of the collar and a wall of the container,” and that the collar is connected inside the container. As is known, there is no gap between the collar and the wall of the container. Accordingly, disposing the label and the marker between the collar and container is directly opposed to the teachings of Ward because it places the marker in a location that is not in a gap. Neither Focke nor Boriani adds anything in this regard.

Further, the claimed construction is superior. By requiring a gap, Ward includes a lot of “dead space” in the packaging. This dead space increases the amount of paperboard necessary to create the packaging, thereby increasing costs. The dead space further increases the size of the package, thereby increasing shipping costs – less product per pallet is shipped.

Accordingly, there is no suggestion within Ward to dispose the sensor between the collar and the container, and claim 1 is therefore allowable. Claims 3, 6, 10, 11 and 17-21 depending from claim 1 are also allowable.

CONCLUSION

In view of the foregoing remarks, it is submitted that the claims as now appearing in this application are in good and proper form for allowance. A favorable action on the part of the examiner is respectfully solicited. If, in the opinion of the examiner a telephone conference would expedite prosecution of the subject application, the examiner is invited to call the undersigned attorney.

The Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 13-2855, under Order No. 20022/39780/US.

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Respectfully submitted,



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